

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10732 of 2014

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Zafar Imam S/o Late Matloob Raza R/o Village - Jagmalwa, P.O. Thawe, P.S.
Thawe, District – Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Law Department, Govt. of Bihar, (Patna).
2. The Principal Secretary Home Department.
3. The Director General - Prosecution Home Department.
4. The District Magistrate, Gopalganj.
5. The Public Prosecutor, Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate Mr. Harendra Prasad
For the State	:	Mr. Kameshwar Kumar, G.P. 17 Mr. S. K. Ranjan, J.C. to G.P. 17

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 22-12-2016

Heard learned counsel for the parties.

The petitioner had approached the Court being aggrieved by the order of the District Magistrate, Gopalganj contained in Memo No. 1397 dated 04.07.2013, by which recommendation was made for removal of the petitioner from the post of Special Public Prosecutor under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and also of appointing another counsel to act as Special Public Prosecutor.

A counter affidavit has been filed on behalf of the State in which it has been stated that pursuant to the said



recommendation of the District Magistrate, Gopalganj, the Government had asked him either to engage the Public Prosecutor or a senior counsel to discharge the duty of Special Public Prosecutor and for getting approval of the same from the State Government. Nothing has been brought on record to show that the Government either approved removal of the petitioner or the engagement of another person by the District Magistrate, Gopalganj. Thus, clearly the action of the then District Magistrate, Gopalganj was totally beyond jurisdiction and cannot be sustained. Once the petitioner was appointed as Special Public Prosecutor by the State Government, it is only the State Government which can remove him. Further, unless he has been removed, the post not becoming vacant, there cannot be any alternative arrangement made by the District Magistrate, as has been done in the present case. This is also illegal. The Court was, thus, of the opinion that the then District Magistrate, Gopalganj, who has passed the impugned order, was required to be proceeded against. However, at this stage, learned counsel for the State submitted that the incumbent is now no more alive.

Learned counsel for the petitioner does not deny the said fact.

In view of the aforesaid, as the term of engagement of the petitioner as Special Public Prosecutor has also ended, the writ



application, for all practical purposes, having become infructuous, stands disposed off.

However, for the purposes of record, the order impugned dated 04.07.2013 contained in Memo No. 1397 being totally without jurisdiction, stands set aside, though without any consequential orders.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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